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10/741,678

12/19/2003

Beth A. Lange

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EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

NOTIFICATION DATE

DELIVERY MODE

12/15/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BETH A. LANGE

Application 10/741,678
Technology Center 3700

Mailed: December 12, 2008

Before KRISTA ZELE, *Deputy Chief Appeals Administrator.*

ZELE, Deputy Chief Appeals Administrator.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 15, 23, 28, and 29 are rejected under 35 U.S.C. § 103(as being unpatentable over Ehrlich (U.S. Patent 4,221,221) in view of Gallo (U.S. Patent 6,622,856); 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to the claims above, and further in view of Moore (U.S. Patent 6,405,867). The rejected claims that have not been appealed and/or argued for appeal are claims 20-22.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 7, Sep. 2008).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to enter a paper canceling claims 20-22;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and

Application No. 10/741,678

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ:hh

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